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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,166	01/13/2004	Edward B. Keller	07055859	3545
26565 7590 MAYER BROWN LLP P.O. BOX 2828 CHICAGO, IL 60690			EXAMINER MEINICKE DIAZ, SUSANNA M	
			ART UNIT 3692	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,166

Applicant(s)

KELLER ET AL.

Examiner

Susanna M. Diaz

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/00)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____
- 7) ☐ Paper No(s)/Mail Date _____

DETAILED ACTION

1. This final Office action is responsive to Applicant's amendment filed November 20, 2007.

Claims 1-3, 6-8, and 11 have been amended.

Claims 1-11 are presented for examination.

Response to Amendment

2. Applicant's amendments to the specification dated June 21, 2007 have been entered.

The previously pending rejections under 35 U.S.C. §§ 101 and 112, 2nd paragraph are withdrawn in response to Applicant's current claim amendments.

Response to Arguments

3. Applicant's arguments filed November 20, 2007 have been fully considered but they are not persuasive.

Applicant argues that e-fluentials does not take demographic data into account. Applicant cites page 10 of "The e-fluentials" to assert that e-fluential teaches away from using demographic data. The Examiner respectfully disagrees. "The e-fluentials" discusses how demographics can be used as part of the analysis differentiating e-fluentials from the general online population, e.g., based on age, income, and level of education ("The e-fluentials": page 10). "The e-fluentials" states, "The overall similarity of the two populations means that e-fluentials cannot easily be identified by demographics

Art Unit: 3692

alone" ("The e-fluentials": page 10), which implies that demographic data and corresponding demographic variables are used, *in addition to* other information, to differentiate e-fluentials from a general population.

Also, Examiner notes that, as per MPEP § 2144.03(C), the statements of Official Notice made in the art rejection have been established as admitted prior art since Applicant has not traversed the Examiner's assertions of Official Notice. More specifically, the following statements of Official Notice are now formally established on record as admitted prior art:

Official Notice is taken that it was old and well-known in the art of predictive modeling at the time of Applicant's invention to validate predictive variables (used to create an algorithm) on a second group of test subjects; validation of the predictive variables helps to ensure that the model is taking into account the most effective variables at making accurate predictions.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burson-Marsteller's e-fluentialsSM research, as disclosed in (1) Burson-Marsteller's archived e-fluentials web site, retrieved from [URL:

<http://web.archive.org/.../efluentials.com...>], herein referred to as "Burson-Marsteller's e-fluentialsSM research," (2) the article "Ninety Percent of Online Influentials Turn to Company Web Sites For Corporate Information, But Only 17 Percent Find Them Credible," herein referred to as "Ninety Percent," and (3) Burson-Marsteller's "The e-fluentials." The web pages have been archived by web.archive.org on June 1, 2002, February 3, 2003, and February 15, 2003. "Ninety Percent" makes specific reference to the efluentials web site <http://www.efluentials.com> and to Burson-Marsteller's e-fluentialsSM research and, therefore, is deemed to provide further information regarding features inherent to Burson-Marsteller's e-fluentialsSM research.

E-fluentials discloses a method for identifying from demographic data those individuals in a population having a greater probability than other individuals in the population of influencing the choices made by others comprising:

[Claims 1, 6] a. determining if each individual in a first population is influential (Burson-Marsteller's e-fluentialsSM research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users." Pages 5-23 show the results of an E-fluential analysis);

[Claims 2, 7] wherein determining if each individual in the first population is influential comprises:

a. formulating queries to be answered by an individual in the first population such that the answers by an individual in the population indicate whether the individual

has a greater probability than other individuals in the first population of influencing choices made by others (Burson-Marsteller's e-fluentialsSM research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. "Representing 10% of the online population, approximately 11 million users, this group reaches more people on more topics than the average online users");

b. providing the queries to individuals in the first population (Burson-Marsteller's e-fluentialsSM research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential; Page 3 -- E-fluential quiz questions are shown); and

c. analyzing the answers by the individuals in the first population to determine whether each of the individuals in the first population has a greater probability than other individuals in the first population of influencing choices made by others (Burson-Marsteller's e-fluentialsSM research: Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential. Pages 5-23 show the results of an E-fluential analysis);

[Claims 3, 8] wherein the choices made by others are selected from the group consisting of:

consumer product decisions, consumer service decisions, political issue decisions, political candidate decisions, personal finance decisions, investment decisions, real estate decisions, insurance decisions, travel decisions, and leisure decisions (Burson-Marsteller's e-fluentialsSM research: Page 3 -- An individual is

Art Unit: 3692

inquired about sending e-mails to politicians, e.g., a decision relating to politics, and making friends online, e.g., a leisure decision);

[Claims 4, 9] wherein the queries are based on factors selected from the group consisting of:

written or called any politician at the state, local, or national level; attended a political rally, speech, or organized protest of any kind; attended a public meeting on town or school affairs; held or run for political office; served on a committee for some local organization; served as an officer for some club or organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; signed a petition; worked for a political party; made a speech; written an article for a magazine or newspaper; and been an active member of any group that tries to influence public policy or government (Burson-Marsteller's e-fluentialsSM research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at the state, local, or national level), and sending e-mails to well-known news and media companies such as Time, Newsweek, or CNBS, e.g., writing a letter to a newspaper or magazine. The role of the recited editor is not defined in such a way that it affects the structure or functionality of the claimed invention; therefore, any individual who receives e-mail at a well-known news and media company from the potential E-fluential individual can be interpreted as the recited "editor");

[Claims 5, 10] wherein the queries are based on factors selected from the group consisting of:

written or called any politician or contacted any government official at local regional or national level; attended a political rally, speech or event; attended a public meeting on town or school affairs; led or served on a committee on some local organization; written a letter to the editor of a newspaper or magazine or called a live radio or TV show to express an opinion; made a speech or gave a talk to a group; been an active member of a group that tries to influence public policy or create change in the community; asked a question in a public meeting; made a complaint to a store, company, or organization; made a sizable donation to a local or national organization; attended business lunches or dinners on a regular basis, and organized a special social event (Burson-Marsteller's e-fluentialsSM research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., writing a politician (who is understood in the United States as being at a local, regional, or national level));

[Claim 11] wherein the additional informational data is based on factors selected from the group consisting of:

household size, household income, occupation, presence of young adult in household, retail purchase activity, political affiliation, corrective lenses, golf participant, cd player owner, personal or home computer owner, pc operating system type, religious or inspirational reader, religiously active, active in theater or performing arts, active in general arts or culture, active in current affairs or politics (Burson-Marsteller's e-fluentialsSM research: Page 3 -- An individual is inquired about sending e-mails to politicians, e.g., active in politics).

Regarding claims 1 and 6, the Burson-Marsteller's e-fluentialsSM research selects e-fluentials using a predictive algorithm based on their earlier research ("Ninety Percent": ¶ 7). This research has been used to identify which characteristics (i.e., variables) are most closely associated with e-fluentials ("Burson-Marsteller's e-fluentialsSM research": Page 2 -- A quiz is offered to individuals to determine if each individual is an influential person, or "e-fluential." (Pages 5-23 show the results of an E-fluential analysis). "The e-fluentials" discusses how demographics can be used as part of the analysis differentiating e-fluentials from the general online population, e.g., based on age, income, and level of education ("The e-fluentials": page 10). "The e-fluentials" states, "The overall similarity of the two populations means that e-fluentials cannot easily be identified by demographics alone" ("The e-fluentials": page 10), which implies that demographic data and corresponding demographic variables are used, in addition to other information, to differentiate e-fluentials from a general population.

While the e-fluential references do not expressly disclose how the predictive algorithm is performed, it remains evident from these references that a smaller group of the most influential people are identified based on a collection of characteristics (or variables) normally associated with the most influential people in a group. For example, the e-fluentials web site explains that e-fluentials frequently perform the activities that are the subject of the quiz used to identify e-fluentials, such as sending e-mails to politicians and well-known news and media companies (Burson-Marsteller's e-fluentialsSM research: pages 3, 11, and 23) and similar assessments are made using demographic information ("The e-fluentials": page 10). Since these variables are

determined to be useful and predictive of the most influential people in a group, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the e-fluentials research to provide demographic data for each individual in the first population, wherein the demographic data corresponding to a set of demographic variables and identify a plurality of predictive variables from the set of demographic variables such that the demographic data corresponding to the plurality of predictive variables substantially correlates to an individual in the first population being determined to be influential in order to practically apply Burson-Marsteller's past research to make future predictions regarding which people are the most influential within a group, thereby perpetuating the usefulness of such research over time. Additionally, Official Notice is taken that it was old and well-known in the art of predictive modeling at the time of Applicant's invention to validate predictive variables (used to create an algorithm) on a second group of test subjects [now admitted prior art]; validation of the predictive variables helps to ensure that the model is taking into account the most effective variables at making accurate predictions [now admitted prior art]. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify e-fluentials' predictive model to incorporate the step of validating the plurality of predictive variables to determine a final set of predictive variables and to create a database scoring algorithm (e.g., by providing demographic data for a second population, wherein the demographic data for the second population corresponds to the final set of predictive variables and applying the database scoring algorithm to the demographic

data for the second population to determine a group of influential individuals, wherein each test data vector corresponds to an individual in the second population, wherein the group of influential individuals represent a subgroup of the second population that is predicted to have a higher probability of being influential with respect to the second population in general) in order to help ensure that the model is taking into account the most effective variables at making accurate predictions.

Further regarding claim 6, the e-fluential references disclose the step of reformatting the plurality of predictive variables into numeric representations of gains ("Burson-Marsteller's e-fluentialsSM research": Figs. F through K show percentage gains in activities, i.e., predictive variables, engaged in by e-fluentials versus the general online population; "The e-fluentials": Page 10 shows percentage gains related to varying demographics, i.e., predictive variables, more commonly representative of e-fluentials versus the general online population).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Doherty (U.S. Patent No. 7,143,054) – Performs an assessment of communication strengths of individuals from electronic messages.

Barbuto, Jr. et al., "A Field Examination of Two Measures of Work Motivation as Predictors of Leaders' Influence Tactics" – Discusses the role that demographics play in leadership patterns and tactics.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3692

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692
February 18, 2008